



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
Washington, D.C. 20224

August 18, 2009

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4.48, 4.75, and 4.76

MEMORANDUM FOR ALL EXAMINERS, ESTATE AND GIFT ATTORNEYS AND
APPELLATE OFFICERS

FROM: Christopher Wagner /s/ *Christopher Wagner*
Commissioner, Small Business/Self-Employed Division

Steven T. Miller /s/ *Steven T. Miller*
Commissioner, Large and Mid-Size Business Division

Sarah Hall Ingram /s/ *Sarah Hall Ingram*
Commissioner, Tax Exempt and Government Entities Division

Diane Ryan /s/ *Diane S Ryan*
Chief, Appeals

SUBJECT: Procedures for Implementing the Penalty for the Substantial and
Gross Valuation Misstatements Attributable to Incorrect
Appraisals Under IRC Section 6695A

The purpose of this memorandum is to provide interim guidance to ensure all of our examiners are aware of the procedures for assertion of the IRC section 6695A Penalty.

The Service has authority to assert penalties and to seek enjoinder of appraisers. Prior to the passage of the Pension Protection Act of 2006 (Pub. L. No. 109-280), appraisers could only be subject to penalties under IRC section 6700 or IRC section 6701.

Section 1219 of the Pension Protection Act of 2006 added new IRC section 6695A, Substantial and Gross Valuation Misstatements Attributable to Incorrect Appraisals. This new penalty provision allows the Service to assert a penalty against any person who prepared an appraisal of the value of property and who knew, or reasonably should have known, the appraisal would be used in connection with a return or claim for refund and that appraisal results in a substantial valuation misstatement (within the meaning of IRC section 6662(e)), a substantial estate or gift tax valuation understatement (within

the meaning of IRC section 6662(g)), or a gross valuation misstatement (within the meaning of IRC section 6662(h)) with respect to such property.

The amount of the IRC section 6695A penalty is the lesser of the greater of 10 percent of the amount of the underpayment (defined by IRC section 6664(a)) attributable to the misstatement or \$1,000, or 125 percent of the gross income received from the preparation of the appraisal.

The penalty does not apply if the appraiser can establish that it was "more likely than not" that their appraisal value was correct. The statute does not define "more likely than not" but forthcoming regulations will provide further guidance on this standard.

This new penalty applies to appraisals prepared with respect to returns or submissions filed after August 17, 2006. However, if the appraisal relates to a façade easement donation, the penalty applies to returns filed after July 25, 2006.

Who asserts the Penalty?

1. Revenue Agents, E & G Attorneys and Tax Compliance Officers have responsibility for asserting IRC section 6695A penalties.
2. Examiners are encouraged to submit referrals to LMSB's Field Specialists Engineers for assistance or consultation. Depending on the facts and circumstances of the related tax case, additional Engineer support may be warranted to fully develop the penalty case particularly if the Engineers were not involved during the related tax examination. Referrals for Engineer assistance should be made using the Specialist Referral System (SRS).

Asserting the IRC 6695A Penalty:

1. An IRC section 6695A appraiser penalty case will be conducted as a separate and distinct case from the related tax examination.
2. During the related tax examination, examiners will inquire, as warranted, to develop facts and circumstances to determine whether or not an IRC section 6695A appraiser penalty case should be opened. This determination will be documented in the examination workpapers.
3. All discussions related to appraiser penalties with either the taxpayer, return preparer or designated Power-of- Attorney, will be limited to the development of facts to determine the applicability of a penalty. Penalties under IRC section 6695A will not be proposed in the presence of the taxpayer.
4. Generally, an IRC section 6695A penalty against an appraiser will not be proposed until the related tax examination is completed at the group level.

If the claimed value of the property on the return or claim for refund, which is based on an appraisal results in a substantial valuation misstatement, substantial estate or gift tax valuation understatement, or gross valuation misstatement with respect to such property, the examiner should open an IRC section 6695A penalty case to determine if sanctions against the appraiser are warranted. Generally, there is a substantial valuation misstatement under chapter 1 if the value of property is 150 percent or more of the amount determined to be the correct amount of such valuation. A gross valuation misstatement under chapter 1 occurs when the claimed value of the property is 200 percent or more of the correct amount of such valuation. There is a substantial estate or gift tax valuation understatement if the value of the property claimed is 65 percent or less of the amount determined to be the correct amount of such valuation. There is a gross estate or gift tax valuation understatement if the value of the property claimed is 40 percent or less of the amount determined to be the correct amount of such valuation.

The following materials providing procedures, forms and letters for consideration and assertion of the IRC section 6695A Penalty are posted on the IRC Section 6695A Penalty Link on the SBSE Servicewide Penalty Website.

- o Examination Procedures
- o Appraiser Penalty Appointment Information Letter
- o F872-AP – Consent to Extend the Time on Assessment of an IRC 6695A Penalty
- o IRC Section 6695A, 6700 & 6701 Valuation Job Aid
- o IRC 6695A Penalty Report Job Aid (F886-A Explanation of Items, Penalty Report)
- o Penalty Report Transmittal Letter
- o IRC 6695A Penalty No-Change Letter

Please route questions through your local management chain for resolution. For any unresolved issues, contact Senior Program Manager Servicewide Penalty Program, Susan H. Deidrich or Servicewide Penalties Senior Program Analyst, Michael M. Berue.

Effect on Other Documents: This guidance will be incorporated into IRM's 4.10.6, 4.46.5.4, 4.48, 4.75, and 20.1.12 as soon as possible.

Attachments

Cc: www.irs.gov

IRC 6695A Appraiser Conduct Penalty Examination Procedures

Overview:

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The amount of the IRC section 6695A penalty is the lesser of:

- The greater of 10 percent of the amount of the underpayment (defined by IRC section 6664(a)) attributable to the misstatement or \$1,000, or
- 125 percent of the gross income received from the preparation of the appraisal.

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Who Asserts the Penalty:

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2. Examiners are encouraged to submit referrals to LMSB Engineering for assistance or consultation. Depending on the facts and circumstances of the related tax case, additional Engineering support may be warranted to fully develop the penalty case particularly if Engineering was not involved during the related tax examination. Referrals to Engineering should be made using the Specialist Referral System (SRS).

IRC 6695A Appraiser Conduct Penalty Examination Procedures

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3. All discussions related to appraiser penalties with either the taxpayer, return preparer or designated Power-of-Attorney, will be limited to the development of facts to determine the applicability of a penalty. Penalties under IRC section 6695A will not be proposed in the presence of the taxpayer.
4. Generally, an IRC section 6695A penalty against an appraiser will not be proposed until the related tax examination is completed at the group level.
5. If the claimed value of the property on the return or claim for refund which is based on an appraisal results in a substantial valuation misstatement, substantial estate or gift tax valuation understatement, or gross valuation misstatement with respect to such property, the examiner should open an IRC 6695A penalty case to determine if sanctions against the appraiser are warranted. Generally, there is a substantial valuation misstatement under chapter 1 if the value of property is 150 percent or more of the amount determined to be the correct amount of such valuation. A gross valuation misstatement under chapter 1 occurs when the claimed value of the property is 200 percent or more of the correct amount of such valuation. There is a substantial estate or gift tax valuation understatement if the value of the property claimed is 65 percent or less of the amount determined to be the correct amount of such valuation. There is a gross estate or gift tax valuation understatement if the value of the property claimed is 40 percent or less of the amount determined to be the correct amount of such valuation.

Statute of Limitations:

1. The statute of limitations on assessment for an IRC section 6695A penalty generally expires three years from the later of the due date of the related return or the date the return was filed.
2. The statute on the appraiser penalty case under IRC section 6695A can be extended using Form 872-AP, Consent to Extend the Time on Assessment of an Appraiser Penalty.
3. A transcript of the return on which the appraiser penalty is based should be included in the appraiser penalty case file for accurate monitoring of the expiration date.

**IRC 6695A Appraiser Conduct Penalty
Examination Procedures**

4. Consents should be obtained when the statute of limitations for assessing the appraiser penalty will expire within 180 days.

IRC 6695A Appraiser Conduct Penalty Examination Procedures

Power of Attorney:

If a representative is to be included in correspondence or discussions of the 6695A penalty, a revised Form 2848, Power of Attorney and Declaration of Representative, will be needed that states "Income Taxes and Civil Penalties." In addition, please ensure that (1) the applicable year is complete, i.e., "Dec. 31, 2004" or "12/31/2004," and not merely "2004" or "04," and (2) that there is evidence that the form has been sent to the Campus.

Field Examination Procedures:

1. If the examiner determines a penalty is warranted, the examiner will prepare Form 5345-D, Examination Request-ERCS (Examination Returns Control System) Users, and secure the group manager's approval. ERCS has the capability to request controls on penalty cases; these are not controlled on AIMS.

From the ERCS menu, the Group/Team secretary selects "Request return", then using submenu # 2, selects "Control Penalty Investigation". Additional form instructions are noted below:

- a. Check One Box Only – Select the "Control Penalty Investigation" box
- b. Taxpayer Name/Name Control – The name control of the appraiser
- c. TIN – The TIN of the appraiser who prepared the appraisal used in connection with preparation of the return or claim for refund
- d. Tax period – The tax period of the return or claim for refund in which the appraisal was used
- e. Form Type – Enter "Not applicable"
- f. Activity Code – Enter "552"

Note: Based on the Activity Code "552", ERCS will **automatically** enter the MFT "PB" and the Source Code "99"

- g. Statute Date – Enter applicable date (3 years from the later of the due date of the return or the date the return was filed, unless an extension has been secured, then enter the extension date)
- h. Project Code – If the appraiser penalty case is related to a project, enter appropriate project code
- i. Tracking Code – If the appraiser penalty case is related to a project with a unique tracking code, enter appropriate tracking code
- j. Related Return Information - The return or claim for refund that claimed the value of the property based on the appraisal
- k. Group Managers will indicate approval for the appraiser penalty case by signing and dating this form

IRC 6695A Appraiser Conduct Penalty Examination Procedures

2. Form 5345-D is used for ERCS users. Non-ERCS users should use Form 5345-B, *Examination Request Non-ERCS Users*.
3. Once managerial approval is secured, the examiner will distribute copies of Form 5345-D or B as follows:
 - a. Original – Remains in the penalty case file
 - b. Group copy – Retained in the group for control purposes
 - c. SBSE Lead Development Center (LDC) copy – Send to the SBSE LDC for tracking and monitoring
4. Examiner time charges for the IRC section 6695A appraiser penalty case will be charged to activity code 552.
5. After securing the approval, the examiner will contact the appraiser using Letter 4477, *IRC section 6695A Appraiser Penalty Appointment Letter*. The purpose of this meeting will be to gather sufficient facts to determine whether the appraiser can establish that the value established in their appraisal meets the “more likely than not” exception as provided in IRC section 6695A(c).
6. If the appraiser cannot establish that the “more likely than not” exception applies, the examiner must propose an IRC section 6695A penalty.
7. Examiners will make appropriate third party contacts to develop all facts relevant to the determination of the appropriateness of the penalty. IRM 4.11.57 has the procedures for third party contacts and guidance for examiners’ making third party contacts.
8. If the examiner determines no penalty is warranted, Letter 4478, *IRC section 6695A Appraiser Penalty No-Change Letter*, will be prepared at the group level and left undated in the file. Technical Support will date and issue the letter if the case is selected for sample review, otherwise, the letter will be issued according to area policy.
9. After consideration of all facts and circumstances, if the examiner determines an IRC section 6695A penalty does apply, the examiner will prepare Form 8278, *Assessment and Abatement of Miscellaneous Civil Penalties*, and Form 886A, *Explanation of Items*, or its equivalent.
10. Form 886A, *Explanation of Items* (or its equivalent), should include the following information:
 - a. The basis for assertion of the penalty,
 - b. Why the “more likely than not” statutory exception does not apply, and
 - c. The appraiser’s position regarding the penalty.
11. The examiner will prepare Letter 4485, *IRC section 6695A Appraiser Penalty Assessment Notification Letter*. This letter will advise of the proposed penalty, solicit payment, offer a supervisory conference, and provide an explanation of the dispute process. A copy of the Form 886A, *Explanation of*

IRC 6695A Appraiser Conduct Penalty Examination Procedures

Items (or its equivalent), and other pertinent documents or workpapers should be included with this correspondence.

12. If an IRC section 6695A penalty is assessed against an appraiser, an information referral to the Office of Professional Responsibility should be considered where willful conduct is involved. A referral to the SBSE Lead Development Center is mandatory.
 - a. Office of Professional Responsibility referrals – use Form 8484, *Penalty Information Report*. A copy of Form 886A, *Explanation of Items* (or its equivalent), and other pertinent documents or workpapers should also be forwarded.
 - b. SBSE Lead Development Center – use the SBSE LDC Referral Form, which can be found at:
<http://abusiveshelter.web.irs.gov/LDC/LDC%20Referral%20Form.doc>
A copy of Form 886A, *Explanation of Items* (or its equivalent), and other pertinent documents or workpapers should also be forwarded.
 - c. If the penalty case is no-changed, a copy of the no-change letter will be sent to the SBSE Lead Development Center to update their database.

Penalty Case File:

1. Examiners will attach Form 3198, *Special Handling Notice*, to each penalty case file, identifying it as an IRC section 6695A appraiser penalty case.
2. Form 8278, *Assessment and Abatement of Miscellaneous Civil Penalties*, using the current version from the Electronic Publishing website, the examiner will enter:
 - a. Line 1– Enter appraiser name
 - b. Line 2– Enter appraiser address
 - c. Line 3– Select “IMF 55”
 - d. Line 5– Enter penalty case year
 - e. Line 6– Enter the appropriate statute date
 - f. Line 7– Enter the appraiser SSN or firm EIN
 - g. Line 8– Enter appropriate examination division
 - h. Line 9 page 1 column (c) and (d) – Enter the number of violations and the penalty amount. If no penalty is proposed, enter -0-
 - i. Line 10-13 – Enter examiner name, date Form 8278 was completed, organization code, and phone
 - j. Line 14 – Group manager Signature and date to indicate approval of the penalty

IRC 6695A Appraiser Conduct Penalty Examination Procedures

3. Related Income Tax Workpapers. The following information should be included in the penalty case file:
 - a. First two pages of the related tax return and any schedules related to the understatement.
 - b. Copies of relevant workpapers from the related tax examination file including but not limited to:
 - i. Copy of the original appraisal prepared by the appraiser.
 - ii. Copy of the IRS Field Specialist Engineer's and/or outside fee appraiser's appraisal or appraisal review report.
 - iii. Copy of the Revenue Agent Report.
 - iv. Any documents, interview notes, or affidavits pertinent to the determination of the appraiser penalty.
4. Assembly of Case File. The case file will include:
 - a. Form 3198, *Special Handling Notice*
 - b. Form 8278, *Assessment and Abatement of Miscellaneous Civil Penalties*, using the current version from the Electronic Publishing website
 - c. Form 886A, *Explanation of Items*, or its equivalent
 - d. Form 4318, *Examination Workpaper Index*
 - e. *Examiner's Activity Record*
 - f. Form 5345-D, *Examination Request-ERCS (Examination Returns Control System) Users*, or Form 5345-B, *Examination Request Non-ERCS Users*
 - g. Copies of all correspondence to and from the appraiser
 - h. Documentation of the appraiser interview(s)
 - i. Taxpayer and other third party contact interviews and affidavits
 - j. Copy of relevant work papers as described item 3 above
 - k. Copy of Form 8484, Referral to the Office of Professional Responsibility
 - l. Copy of the SBSE LDC Referral Form

Appeal Rights:

1. IRC section 6695A penalties have post-assessment (but prepayment) penalty appeal rights.
2. An appraiser may file a claim for refund utilizing Form 843, Claim for Refund and Request for Abatement. If the claim is denied and the appraiser has not had post-assessment Appeals consideration, administrative appeal rights will

IRC 6695A Appraiser Conduct Penalty Examination Procedures

be granted by the area or service center when the basis for the claim does not conflict with section 601.106(b) of the Statement of Procedural Rules (or successor guidance). An appeal cannot be based on moral, political, constitutional, religious, or similar arguments.

3. If the penalty has been paid in full, the appraiser may bring a refund suit in either the U.S. Court of Federal Claims or a district court (1) immediately upon denial of the claim or (2) upon the expiration of six months after the date of filing the claim, if the Service has not acted within that time. The appraiser's refund suit must be within two years of the date of denial of the claim.

Case Processing and Assessment Instructions:

1. The IRC section 6695A appraiser penalty case is not established or controlled on AIMS.
2. An IRC section 6695A appraiser penalty case will not be subject to mandatory review. Groups will close the case to Case Processing Support following area guidelines.
3. An IRC section 6695A appraiser penalty case will be transmitted using Form 8278, *Assessment and Abatement of Miscellaneous Civil Penalties*. The current version can be downloaded from the Electronic Publishing website. The assessments will be input to the Master File (MFT 55) through IDRS using command code ADJ54, Transaction Code 290 with a zero amount, penalty reference number 606, and the amount of the penalty.
4. A notice to the appraiser will be generated explaining the assessment and appeal rights.
5. If a penalty is proposed, the case will be closed from the group with Disposal Code 12 and case Status Code will be updated to 51.
6. If no penalty is proposed, the case will be closed from the group with Disposal Code 02 and updated to case Status Code 51.

Internal Revenue Service

Department of the Treasury

Date:

Taxpayer(s):

Tax Form(s):

Tax Year(s):

Examiner:

Examiner's Employee ID Number:

Telephone Number:

Fax Number:

Dear

We are proposing a penalty under Internal Revenue Code section 6695A, Substantial and Gross Valuation Misstatements Attributable to Incorrect Appraisals. This penalty is based on our review of the appraisal(s) relating to a federal tax matter that you prepared on behalf of the taxpayer(s) named above.

We have scheduled a meeting to give you an opportunity to discuss the facts or legal arguments you or your representative may present to the Service in considering the appropriateness of the penalty.

Appointment Information:

Date/Time:

Location:

Please contact me at the telephone number shown above if you have any questions.

Thank you for your cooperation.

Sincerely,

Internal Revenue Agent

Form 872-AP (Rev. February 2009)	Department of the Treasury — Internal Revenue Service	In reply refer to:
	Consent to Extend the Time on Assessment of IRC Section 6695A Penalty	Appraiser Tax Identification Number

(Name)

an appraiser, of

(Number, Street, Town or City, State, and ZIP Code)

and the Commissioner of Internal Revenue consent and agree to the following:

- (1) The penalty imposed by section 6695A of the Internal Revenue Code may be assessed against the above named appraiser at any time on or before _____ with respect to the tax return(s) or claim(s) for refund of the taxpayers named below.
- (2) The appraiser may file a claim for credit or refund and the Internal Revenue Service may credit or refund the penalty(ies) within 6 months after this agreement ends.

Form number of return for which penalty is being charged	Taxpayer's name as shown on return	Taxpayer's identification number	Tax period

You have the right to refuse to extend the period of limitations or limit this extension to a mutually agreed-upon issue(s) or mutually agreed-upon period of time. Signing this consent will not deprive you of any appeal rights to which you would otherwise be entitled.

WHO MUST SIGN The consent should be signed by the Appraiser. An attorney or agent may sign this consent if specifically authorized by a power of attorney which, if not previously filed, must accompany this form.		
	<p>_____</p> <p>(Signature)</p> <p>I am aware that I have the right to refuse to sign this consent or to limit the extension to mutually agreed-upon issue(s) and/or period of time as set forth in I.R.C. § 6501(c)(4)(B).</p>	<p>_____</p> <p>(Date signed)</p>

INTERNAL REVENUE SERVICE SIGNATURE and TITLE

(Division Executive Name - see instructions)

(Division Executive Name - see instructions)

BY

(Authorized Official Signature and Title - see instructions)

(Date signed)

Instructions for Internal Revenue Service Employees

Complete the Division Executive's name and title depending upon your division.

If you are in the Small Business /Self-Employed Division, enter the name and title for the appropriate division executive for your business unit (e.g., Area Director for your area; Director, Specialty Programs; Director, Compliance Campus Operations; Director, Fraud/BSA, etc.)

If you are in the Wage and Investment Division, enter the name and title for the appropriate division executive for your business unit (e.g., Area Director for your area; Director, Field Compliance Services).

If you are in the Large and Mid-Size Business Division, enter the name and title of the Director, Field Operations for your industry.

If you are in the Tax Exempt and Government Entities Division, enter the name and title for the appropriate division executive for your business unit (e.g., Director, Exempt Organizations; Director, Employee Plans; Director, Federal, State and Local Governments; Director, Indian Tribal Governments; Director, Tax Exempt Bonds).

If you are in Appeals, enter the name and title of the Chief, Appeals.

The signature and title line will be signed and dated by the appropriate authorized official within your division.

IRC Section 6695A, 6700 & 6701 Valuation Penalty Job Aid

INSTRUCTIONS

This job aid is a guide to assist Engineering and Examination in evaluating whether a civil penalty may be appropriate with respect to a specific appraiser, appraisal firm, or other persons/entities identified during the course of an examination with a valuation issue. If an IRC section 6700 or 6701 penalty appears to be appropriate a referral to the Lead Development Center (LDC) will need to be made prior to the assertion of a penalty.

It is recommended that the assigned Engineer/Appraiser complete this job aid and forward to the Revenue Agent or Estate & Gift Attorney.

Date Appraiser TIN

Appraiser Name

Appraiser Firm

Related Case Taxpayer Name

Tax Year(s) MFT

Engineer

Revenue Agent/E & G Attorney

Tax Issue: ☐ Conservation Easement ☐ Business Valuation ☐ Artwork ☐ Stock

☐ Other non-cash charitable contribution Describe

☐ Other Describe

IRC Section 6695A, 6700 & 6701

Valuation Penalty Job Aid

IRC Section 6695A-SUBSTANTIAL AND GROSS VALUATION MISSTATEMENTS ATTRIBUTABLE TO INCORRECT APPRAISALS *(Note: This penalty is effective for returns filed after 8/17/06 except if related to a façade charitable donation, then the effective date is 7/25/06.)*

Did the appraiser know or should he have reasonably known that the appraisal would be used in connection with a return or claim for refund? <i>(In the case of appraisals obtained for substantiation of charitable deductions, the appraisal must be a “qualified appraisal” and Include a statement that the appraisal was prepared for tax purposes. Treas. Reg. 1.170A-13(c)(3)(ii). If the appraisal is not a qualified appraisal, the appraiser’s engagement letter and/or work files should provide sufficient evidence to meet this standard)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
Is there an understatement of tax attributable to a valuation misstatement or understatement? <i>(See Substantial Valuation Misstatement IRC section 6662(e), Substantial Estate or Gift Tax Valuation Understatement IRC section 6662(g), or a Gross Valuation Misstatement IRC section 6662(h))</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
Can the appraiser establish that the value in the appraisal was more likely than not the proper value?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown

IRC Section 6701 and 6700 PENALTIES:

Questions should be answered based on the information know at the time of completion. Not all questions must be answered “yes” to warrant a referral to the LDC. The decision must be based on the relevant facts and circumstances known in light of the statutory requirements. Further development may be necessary once an investigation is authorized by the LDC.

IRC Section 6701-AIDING & ABETTING UNDERSTATEMENTS

Did the appraiser aid or assist in the preparation or presentation of any portion of the return, affidavit, claim, or other document? <i>(If the appraiser prepared an appraisal for the taxpayer and/or signed the Form 8283 or other document, answer “yes”.)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
Did the appraiser order a subordinate to aid or assist or fail to stop the subordinate from doing so? <i>(For example, did the appraiser review and approve the subordinate’s work on the appraisal?)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
Did the appraiser know or have reason to believe the appraisal or other document provided would be used in a material tax matter? <i>(Did the engagement letter, appraisal, other document or third party indicate the appraiser was aware the appraisal was for tax purposes? If the appraiser signed the Form 8283, answer “yes”.)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
Did or would the use of the appraisal, document, or advice result in an understatement of tax?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
Does the appraisal comply with USPAP (Uniform Standards of Professional Appraisal Practice) standards? <i>(Note: Lack of compliance with USPAP alone is not determinative as to whether an IRC section 6701 penalty should apply.)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown

IRC Section 6695A, 6700 & 6701

Valuation Penalty Job Aid

If no, describe the most significant errors or omissions in the appraisal. <i>(Alternatively, provide reference to appropriate section in Engineering Report)</i>	
Did the appraiser inspect the property?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
Did the appraiser have actual knowledge the appraisal, document or advice, if used, would result in an understatement of tax?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
Did appraiser ignore or fail to address readily available comparable properties?	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
Did the appraiser ignore or fail to appropriately consider relevant information available from public sources? <i>(For example, failure to note an existing restriction or significant limitation on the property impacting the valuation value.)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
Did the appraiser prepare other recent appraisals on this same property or similar property? If so, are there any material inconsistencies in the valuations or methodology in the two appraisals? If so, why? <i>(Use separate attachment, if necessary.)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
Did the appraiser base the appraisal on a recommended valuation of, or modify, change or alter the appraisal at the request of, the taxpayer, donee organization, or other party? If so, why and what evidence or testimony supports this conclusion? <i>(Use separate attachment, if necessary.)</i>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown
What other evidence or facts demonstrate actual knowledge? <i>(Use separate attachment, if necessary)</i> Some factors to consider in evaluating actual knowledge include, but are not limited to, the appraiser's education, training, and experience both with respect to the business of appraising as well as the tax laws.	

IRC Section 6695A, 6700 & 6701

Valuation Penalty Job Aid

IRC Section 6700-PROMOTION OF ABUSIVE TAX SHELTERS, ETC.

<p>Did the appraiser organize or assist in the organization of <u>any</u> plan or arrangement that involved a material tax matter? <i>(Note: There is no all-inclusive definition of an “abusive tax promotion,” the term generally includes any partnership, trust, investment plan, or any other entity or arrangement which is sold to a third party and is designed to be used or is actually used by a third party in obtaining tax benefits not allowed by law.)</i></p> <p style="text-align: center;">OR</p> <p>Did the appraiser participate directly or indirectly in the sale of the plan or arrangement? <i>(For example, information from the appraiser was provided in the marketing material or to an attorney who renders a legal opinion on the plan or arrangement.)</i></p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown</p>
<p>Did the appraiser make or furnish or cause another person to make or furnish a false or fraudulent statement? <i>(Describe details of specific statements and person or other source of these statements)</i></p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown</p>
<p>Did the appraiser know or have reason to know the appraisal was false or fraudulent? <i>(Note: With respect to IRC section 6700, there is a presumption a qualified appraiser would have “reason to know” based upon their level of experience, industry designations, and licensing requirements. This criterion does not apply to IRC section 6701.)</i></p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown</p>
<p>Did the appraised value exceed 200% of the amount determined to be the correct valuation? <i>(Note: If there is a gross valuation overstatement, there is no “knowledge requirement” so long as the appraisal was furnished with respect to the organization or sale of a plan or arrangement.)</i></p>	<p><input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown</p>

HARM TO THE GOVERNMENT

Valuation per appraiser	<input style="width: 100%;" type="text"/>	
Valuation per IRS (if known)	<input style="width: 100%;" type="text"/>	
Total proposed valuation adjustment	<input style="width: 100%;" type="text"/>	
Understatement or potential understatement of tax	<input style="width: 100%;" type="text"/>	<input type="checkbox"/> Unknown
Number of appraisals completed for federal income tax purposes	<input style="width: 100%;" type="text"/>	<input type="checkbox"/> Unknown
Number of other exams/participants known <i>(if any)</i> using this appraiser	<input style="width: 100%;" type="text"/>	<input type="checkbox"/> Unknown
Does the appraiser/appraisal firm maintain a website?		
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown		
URL address: <input style="width: 80%;" type="text"/>		
Does the appraiser/appraisal firm prepare appraisals outside of the local market area?		
<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> Unknown		

IRC Section 6695A, 6700 & 6701

Valuation Penalty Job Aid

RECOMMENDATION

Select one or more of the following options:

- ☐ An IRC section 6695A penalty on the appraiser is recommended. The overvaluation of the property resulted in an understatement of tax. The valuation discrepancy meet one or more of the valuation misstatement statutory standards as defined in IRC section 6662(e) Substantial Valuation Misstatement, IRC section 6662(g) Substantial Estate or Gift Tax Valuation Understatement, or IRC section 6662(h) Gross Valuation Misstatement, the appraiser knew or should have know that the appraisal would be used in connection with a return or refund, and the "more likely than not" exception has not been met. *(Note: All boxes must be checked "YES" for this penalty to be applicable)*
- ☐ IRC section 6700 or 6701 penalties on the appraiser should be considered. Referral to LDC should be made by the Revenue Agent or Estate & Gift Attorney. *(Note: Not all questions must be answered "yes" to warrant a referral to the LDC. The decision must be based on relevant facts and circumstances known in light of the statutory requirements. Further development may be necessary once an investigation is authorized by the LDC.)*
- ☐ IRC section 6700 or 6701 penalties may be applicable to other parties. Referral to LDC should be made by the Revenue Agent or Estate & Gift Attorney.

List other parties who should be considered:

- ☐ No penalties recommended.

Other Comments/Information relevant to consideration of IRC section 6700 or 6701 penalties:

Note: Referrals should be made to the SBSE Lead Development Center if the information or evidence developed during the course of the related examination suggests an IRC section 6700 or 6701 penalties **may** be applicable. A referral to the SBSE LDC must be made before an IRC section 6700 or 6701 penalty can be assessed. The referral can be made by the Revenue Agent, the Estate & Gift Attorney, or IRS Engineer. Additional factual development will generally be required during the investigation. If unsure as to whether a referral would be appropriate, please contact Chris Delacalzada at the SBSE Lead Development Center at 949-389-4591.

The LDC referral form can be found at:

<http://abusiveshelter.web.irs.gov/LDC/LDC%20Referral%20Form.doc>

The following types of information should be submitted with referral (if available):

- Copy of the income, estate or gift tax return.
- Copy of appraisal(s) prepared by Subject Appraiser
- Copy of appraisal or desk review prepared by LMSB Engineering.
- F4549 (Income Tax Cases) or F5278 (Estate & Gift Tax Cases) including F886As.
- Interview notes of taxpayer and Subject Appraiser addressing issues involving the appraisal.
- Other third party interviews or pertinent information related to the determination of value.

Form 886-A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Appraiser		Year/Period Ended

Penalties: ***{insert tax year(s) and penalty amount(s)}***

ISSUE: Internal Revenue Code (IRC) section 6695A Penalty

Whether ***{insert appraiser name and/or firm}*** is subject to the IRC section 6695A penalty for a substantial valuation misstatement under IRC section 6662(e) attributable to an incorrect appraisal. ***{or, if applicable instead, insert substantial estate or gift tax valuation understatement under IRC section 6662(g) or gross valuation misstatement under IRC section 6662(h) as appropriate.}***

FACTS:

Describe the facts from the related tax examination(s). Information included in the RAR and LMSB Engineering report can be used to complete this section.

For example:

On {insert date}, Mr. {insert appraiser or appraiser firm name} prepared an appraisal for {insert taxpayer(s) name} to determine the value of conservation easement {or other type of valuation}. Mr. {insert appraiser or appraisal firm name} signed the required Declaration of Appraiser on Form 8283, Noncash Charitable Contributions. Mr. {insert taxpayer(s) name} relied on the appraisal prepared by Mr. {insert appraiser or appraisal firm name} and claimed a noncash charitable contribution on his {insert tax year(s)} return.

Deficiencies in the appraisal prepared by {insert appraiser or appraisal firm name} were identified during the examination of {insert taxpayer(s) name} tax return. (See Exhibit 1- IRS Engineering Report for additional details.)

An adjustment of \$ {insert adjustment amount(s)} was proposed to the claimed value of the conservation easement as a result of an income tax examination. This adjustment resulted in a substantial valuation misstatement as defined in IRC section 6662(e) of the Internal Revenue Code. ({or, if applicable instead, insert substantial estate or gift tax valuation understatement under IRC section 6662(g) or gross valuation misstatement under IRC section 6662(h) as appropriate.})

Describe the appraiser's professional credentials and appraisal experience. This information may be included in the LMSB Engineer's report or can be gathered during interview(s) of the appraiser. Include discussion as to the appraiser's:

- Educational level and training
- Number of years in practice
- Licenses, designations, and certifications
- Expertise as a expert witness especially related to tax matters
- Business experience
- Specialized areas of expertise and experience
- Teaching experience
- Publication of valuation articles, textbooks, or manuals
- Reputation in the community

If the appraiser has ever been sanctioned by the IRS or other regulatory body include this information in the penalty report.

Form 886-A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Appraiser		Year/Period Ended

For example:

Mr. {insert appraiser or appraiser firm name} is a licensed appraiser in the State of Florida, has a MAI designation, and has 10 years experience as an appraiser. Accordingly, Mr. {insert appraiser or appraiser firm name} knew or reasonably should have known that the appraisal would be used in connection with a tax return or claim for refund. The claimed value on Mr. {insert taxpayer(s) name} return resulted in a substantial valuation misstatement (IRC 6662(e) with respect to such property. {or, if applicable instead, insert substantial estate or gift tax valuation understatement under IRC section 6662(g) or gross valuation misstatement under IRC section 6662(h) as appropriate.}

Discuss evidence/information that demonstrates the appraiser does not meet the “more likely than not” exception as defined in IRC 6695A(c).

LAW:

IRC section 6695A allows for assertion of a penalty on any person who prepares an appraisal of the value of property and such person knows, or reasonably should have known, that the appraisal would be used in connection with a return or claim for refund, and the claimed value of the property on a return or claim for refund which is based on such appraisal results in a substantial valuation misstatement within the meaning of IRC section 6662(e), substantial estate or gift tax valuation understatement within the meaning of IRC section 6662(g), or gross valuation misstatement within the meaning of IRC section 6662(h).

The amount of the penalty is:

1. Lessor of:
 - a) the greater of 10 percent of the amount of underpayment (defined by IRC section 6664(a)) attributable to the misstatement, or
 - b) \$1,000, or
2. 125 percent of the gross income received from the preparation of the appraisal.

IRC section 6695A(c) provides for an exception to the penalty if the person establishes that the value established in the appraisal was more likely than not the proper value.

APPRAISER’S POSITION:

{Insert appraiser’s position, if known.}

CONCLUSION:

The appraisal prepared by Mr. {insert appraiser or appraiser firm name} resulted in a substantial valuation misstatement {or, if applicable instead, insert substantial estate or gift tax valuation understatement under IRC section 6662(g) or gross valuation misstatement under IRC section 6662(h) as appropriate}. Mr. {insert appraiser or appraiser firm name} knew or reasonably should have known the appraisal was to be used in connection with a federal tax matter and the property value as determined by such appraisal resulted in a substantial overvaluation (or gross overvaluation or

Form 886-A	Department of the Treasury - Internal Revenue Service Explanation of Items	Schedule No. or Exhibit
Name of Appraiser		Year/Period Ended

substantial undervaluation, if applicable) of the property. This valuation misstatement resulted in an underpayment of the tax liability of another as described above.

Based on the forgoing, a penalty under section 6695A penalty is proposed in the amounts indicated above. Mr. *{insert appraiser or appraiser firm name}* has not established that the value established in the appraisal meets the "more likely than not" exception to the penalty.

Note: Exhibits should be included in the penalty report as deemed appropriate. If multiple penalties are proposed include a detailed schedule to support the penalty computations.

Internal Revenue Service

Department of the Treasury

Date:

Taxpayer(s):

Tax Form(s):

Tax Year(s):

Examiner:

Examiner's Employee ID Number:

Telephone Number:

Fax Number:

Dear

We reviewed the appraisal you prepared for the taxpayer(s) named above, which is related to the tax year(s) and tax form number(s) shown. We are proposing the assessment of a penalty against you for this appraisal. The enclosed Form 886-A, *Explanation of Items*, explains why we are proposing this appraisal penalty.

Paying the amount due in full now will help you avoid additional interest charges. Please send your check or money order -- payable to the United States Treasury -- to the examiner named above. If you do not pay the amount in full, we will send you a bill for the remaining balance.

You can also contact the examiner to discuss payment options (such as making installment payments) when you cannot fully pay the total amount due. You may have to complete a financial information statement before we approve your installment agreement.

You can request a meeting or telephone conference with the examiner's supervisor if you disagree with the proposed appraisal penalty. You will receive an explanation of your appeal rights in the bill we will send you if the meeting does not resolve the disagreement to your satisfaction.

Sincerely,

Internal Revenue Agent

Enclosure:
Form 886-A

Internal Revenue Service

Department of the Treasury

Date:

Taxpayer(s):

Tax Form(s):

Tax Year(s):

Examiner:

Examiner's Employee ID Number:

Telephone Number:

Fax Number:

Dear

We would like to inform you that we will not be proposing an appraiser penalty under Internal Revenue Code section 6695A, Substantial and Gross Valuation Misstatements Attributable to Incorrect Appraisals. The penalty we were considering related to the appraisal you prepared on behalf of the taxpayer(s) named above.

Please contact me at the telephone number shown above if you have any questions.

Sincerely,

Internal Revenue Agent